

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 219/2006

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

Leighton Corriah

v.

Regina

Mr. Leroy Equiano for the Applicant.

Ms. Deneve Barnett for the Crown.

30th June and 1st July, 2008

Oral Judgment

COOKE, J.A.

1. This is a renewed application for leave to appeal against conviction and sentences. The applicant Mr. Leighton Corriah was on the 7th December, 2006 in the High Court Division of the Gun Court in the parish of Kingston, convicted on two counts of an indictment. Count 1 charged him with illegal possession of firearm and count 2 charged him with shooting with intent. On each count the applicant was sentenced to 15 years imprisonment at hard labour.

2. The virtual complainant, who is a security guard, at about 12:05 a.m. on Sunday the 28th May, 2006, returned to his home in the Rosemount Housing Scheme, Linstead, St. Catherine. He disengaged his gate and went on to open the carport and drove in. He went back, locked the gate and entered onto his verandah. While there, he saw the applicant who expressed that he "catch him

now". The language of the applicant was embroidered with expletives. The applicant fired shots at him and then went around to the side of the house.

3. The virtual complainant was armed but was in such a state of shock that the magazine and keys fell from his hand. He scrambled around trying to retrieve them. The applicant soon re-appeared and started firing again at the virtual complainant. On the first occasion, the virtual complainant estimated that he was about 14 feet away from him and on the second occasion about 28 – 30 feet away from him.

4. The lighting condition was adequate as the learned trial judge found. The yard was illuminated by street lights and this illumination was confirmed by the investigating officer who visited the scene that night. Using the words of the investigating officer Detective Corporal Thompson, "The light brightened the whole section of the yard".

5. The applicant was arrested on the 26th July, 2006 after which he was placed on an identification parade. Because of the circumstances he was obviously pointed out. The defence of the applicant was that of an alibi that, he was not in the environs of Linstead that night; rather, he was in Bog Walk.

6. Two "revised" grounds of appeal were filed by the applicant. Permission was granted to argue these grounds which were:

- "a) The Learned Trial Judge erred in law when he ruled that there was a case for the Applicant to answer.
- b) Having ruled that there was a case to answer in summation the Learned Trial Judge's warnings and directions to himself did not demonstrate that the significance of the Turnbull warning weighed on his mind or that he considered the weaknesses in the identification evidence."

Both grounds were argued together and in essence these are the criticisms levelled at the learned trial judge's summing up. The learned trial judge did not take sufficient consideration of the terrifying circumstances; the 4 – 5 minutes estimate given by the complainant as the time during which he saw the applicant during the second shooting was not a fair estimate taking into consideration the circumstances of the case particularly the efforts being made by the virtual complainant to locate his keys and the magazine.

7. Well, a determination as to the merits of these complaints necessitates the scrutiny of the summation of the learned trial judge. This is how the learned trial judge introduced his analysis in respect of the issue of identification:

"As regards identification, this court must warn itself of the danger inherent in accepting the evidence of visual identification and of the need to be very careful when examining all the aspects of the evidence of this identification parade, because even witnesses who appear to be honest can be mistaken. And this is a case where the defence is saying that the identification is tenuous because in the first instance, it is a fleeting glance and in the second instance was made under very hazardous circumstances as regards to the complainant, he being scared at the time when

he says he identified and could have seen the accused man."

8. It would seem that in this introduction in his analysis the very points raised by counsel as criticisms were not absent from his mind. He then went on to analyze the relevant factors pertinent to the circumstances of the identification.

- (i) The parties were well known to each other. They lived in the same housing scheme. They were well known to each other for over 20 years and in fact the complainant had seen the applicant just a week before when the applicant came to purchase guinness at an establishment to which the complainant had been assigned. The applicant in his unsworn statement confirmed this.
- (ii) There was adequacy of lighting, a factor that the court has already adverted to.
- (iii) There were two opportunities to recognize the applicant's face. The first time was for about five seconds and the second time was when he was by the gate, by the wall by the light at a distance of about some 28 – 30 feet.

9. Returning to the summation of the learned trial judge, in respect of the terrifying circumstances, he had this to say:

"Even in those difficult circumstances, it seems to me that the question of identifying somebody whom he knew for over 20 years would not be an issue."

So what the learned trial judge is saying is that he took into consideration the terrifying circumstances but they were not such that they would be an impediment to a correct identification.

10. Then, in respect of the time, this is what the learned trial judge had to say:

"And it seems to me that even if those five minutes were reduced to much less, there would have been ample opportunity to have seen his assailant and be able to identify him, particularly someone whom he knew so well. There was nothing obstructing his view of the accused man's face and even when you put a car and a wall in between them, it clearly was not in the line of vision. So that when you look at all the aspects of the identification parade, taking into consideration the time, whether he knew the person before, whether he saw the person again or whether the person knew him and all this visual identification from Mr. Amos, whom this court accepts as an honest and truthful witness, is beyond a shadow of a doubt."

We have subjected the learned judge's summation to scrutiny and it is clear that the criticisms put forward by the applicant are without basis. Accordingly, the application for leave to appeal against such conviction is refused.

11. In regard to the question of sentence being manifestly excessive, it must be said that Mr. Equiano, who is quite conversant on sentencing in respect of gun crimes, did not display any of his usual vigor or enthusiasm in trying to persuade this court to reduce the sentences.

12. It is our view, taking into consideration what is happening in this our country today, and taking into consideration the usual range of sentences, it cannot be said that these sentences were manifestly excessive. Therefore, likewise, the application for leave to appeal against sentences is refused. Sentences are to commence on March 7, 2007.